

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Hearing: February 8, 2022

Mailed: February 14, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re SC Licensing, LLC
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Application Serial No. 88737743
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Jill Pietrini of Sheppard Mullin Richter & Hampton LLP,
for SC Licensing, LLC.

Gidette Cuello, Trademark Examining Attorney, Law Office 125,
Heather Biddulph, Managing Attorney.

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Before Bergsman, Coggins, and Lebow,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

SC Licensing, LLC (“Applicant”) seeks registration on the Principal Register of
the mark THE FARMHOUSE BY RACHEL ASHWELL (in standard characters) for

Bed frames; beds; benches; chair pads; cribs; desks;
etagere; fabric figurines; fitted fabric furniture covers;
furniture; bed headboards; magazine racks; mirror frames;
mirrors; non-metallic bottle-stoppers in the nature of
plastic stoppers for bottles; picture frames; pillow forms;
pillows; plate racks; screens for fireplaces; sculptures and
statues of wood, wax, plaster and plastic; seat cushions;
wood boxes; household goods, namely, shoe racks and beds

for household pets; window treatments, namely, interior window shades, in International Class 20.¹

According to Applicant, the name shown in the mark identifies Rachel Ashwell, whose consent to register her name is of record.

The Examining Attorney refused to register Applicant's mark on the ground that Applicant failed to comply with the requirement to disclaim the word "farmhouse." According to the Examining Attorney, "farmhouse" is merely descriptive of the goods because it refers to a particular style of furniture.

Citations to the record and briefs refer to TTABVUE, the Board's online docket system. *See, e.g., New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 USPQ2d 10596, *2 n.1 (TTAB 2020). Citations to the prosecution history refer to the USPTO Trademarks Status and Document Retrieval (TSDR) system by page number in the downloadable .pdf format.

I. Applicable Law

An examining attorney may require an applicant to disclaim an unregistrable component of a mark otherwise registrable. Trademark Act Section 6(a), 15 U.S.C. § 1056(a). Merely descriptive terms are unregistrable under Trademark Act Section 2(e)(1), 15 U.S.C. § 1051(e)(1), and, therefore, are subject to disclaimer if the mark is otherwise registrable. Failure to comply with a disclaimer requirement is grounds for refusal of registration. *See In re Omaha Nat'l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859

¹ Application Serial No. 88737743 was filed on December 23, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant's claim of a bona fide intention to use the mark in commerce.

(Fed. Cir. 1987) (“FirsTier” for banking services is merely descriptive and unregistrable without a disclaimer of the exclusive right to use the term “First Tier”); *In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 47 (CCPA 1975) (“it follows that if the words SOLID STATE [in the mark RICO SOLID STATE], which it appears appellant has declined to disclaim, are descriptive of appellant’s goods within the prohibition of section 2(e)(1), then the Commissioner did not err in conditionally refusing registration.”); *In re Ginc UK Ltd.*, 90 USPQ2d 1472 (TTAB 2007) (ZOGGS TOGGS for clothing is unregistrable without a disclaimer of the exclusive right to use the word “Toggs”); *In re Box Sols. Corp.*, 79 USPQ2d 1953, 1954 (TTAB 2006).

Section 2(e)(1) of the Trademark Act precludes registration of “a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). A term is merely descriptive within the meaning of the statute “if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); see also *In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015).

We “must consider the mark as a whole and do so in the context of the goods or services at issue.” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Calphalon Corp.*, 122 USPQ2d 1153, 1162 (TTAB 2017). “Whether consumers could guess what the product is from consideration of the mark alone is not the test.” *In re Am. Greetings Corp.*, 226 USPQ

365, 366 (TTAB 1985). Rather, “the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS*, 103 USPQ2d at 1757 (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

This principle of analyzing the mark as a whole applies to word marks with multiple components as well.

In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components. ... [I]f ... portions individually are merely descriptive of an aspect of appellant’s goods, the PTO must also determine whether the mark as a whole, i.e., the combination of the individual parts, conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.

In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004).

Cf. In re Am. Fertility Soc’y, 188 F.3d 1341, 51 USPQ2d 1832, 1837 (Fed. Cir. 1999)

(the USPTO must consider the mark in its entirety because the mark, as whole, may be greater than the sum of its parts).

“Evidence of the public’s understanding of [a] term . . . may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers[,] and other publications.” *In re Fallon*, 2020 USPQ2d 11249, at *7 (TTAB 2020) (quoting *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018)). “These sources may include [w]ebsites, publications and use in labels, packages, or in advertising materials directed to the goods.” *Id.*, at *7-8 (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017) (internal quotation omitted)).

“Evidence that a term is merely descriptive similarly may come from an applicant’s own usage other than that found on its labels, packaging or advertising materials.”

In re Omniome, Inc., 2020 USPQ2d 3222, at *4 (TTAB 2019).

II. Facts

The evidence submitted by the Examining Attorney shows that “farmhouse” is an interior design style featuring practicality, simplicity and rustic charm. “Farmhouse” furniture is practical in both form and function, and features simple flourishes and a weathered, worn look. For example,

- The Living Spaces website (livingspaces.com) provides the following information about the farmhouse style:

Classic Farmhouse vs. Modern Farmhouse

There’s something enduring and warm-hearted about farmhouse style. Classic farmhouse has stood the test of time and evolved into today’s modern farmhouse style, which is welcoming, comfortable and timelessly fresh.

Origins of Farmhouse Style

Whether it’s called classic, vintage, rustic or traditional, farmhouse style has a historic place in America. Drawing from the farm homes of early settlers, this style mimics the look and feel of days past. It incorporates the simplified, minimalistic décor molded by the surroundings of farmhouse residents and their need for sturdy, practical furnishings.

Characteristics of Classic Farmhouse Style

- Natural wood accents: Wood was abundant and, therefore, the natural building material. Farm homes usually had panelled [sic] wood walls, wide-plank floors and exposed wood beams. Today’s classic farmhouse style often uses barn board for accent paneling and butcher block for countertops.

- **Apron sinks:** Nothing says farmhouse like an apron sink. In a classic farmhouse, the sink is usually porcelain.
- **Vintage furniture and accessories:** An easy way to decorate in classic farmhouse style is to use vintage furnishings. It's best if they're not in perfect condition and they could even have weathered finishes. Vintage-inspired lighting looks ideal in a classic farmhouse.
- **Traditional fabrics:** Decorating fabrics lean toward floral and paisley, and slipcovers give vintage furniture a second life.

How Modern Farmhouse Is Different

Modern farmhouse design takes the comfortable, relaxed farmhouse style and adds modern touches such as smooth line, glossy accents and neutral color schemes. It's less rustic, more sophisticated and uses contemporary design elements like stainless steel appliances, granite countertops and sleek lighting.

How to Achieve the Modern Farmhouse Look

When designing in modern farmhouse style, look for these features:

Practicality: Furnishing and accessories should be comfortable and practical. They should welcome you into the room, and nothing should be too precious to use regularly. The room should look like it evolved over time.

A neutral palette: Choose a neutral palette to make the room appear fresh and open. Cool or warm neutrals such as cream, beige, silver and grey all work well and balance natural elements. Keep patterns simple and contemporary and bring depth to the neutral palette with a variety of textures.

Mixed and matched: Mix and match furniture, especially vintage and new. Vintage furniture has authenticity, and new furniture has added comfort and style. Also, mix and match traditional natural elements such as wood with newer ones like stainless steel.

Natural elements: Stick to natural elements as much as possible. Continue in the vein of classic farmhouse by introducing distressed wood in architectural features of furniture, but also use natural fibers, such as cotton, sisal, rattan and wicker, and natural stone.

Modern and industrial touches: In a modern farmhouse, the apron sink and appliances are more likely to be stainless steel. Introduce industrial-style metal objects like modern lighting fixtures and mid-century modern-style furniture like a teak dining set for their sleek look and feel.

Minimalism: You want to create a cozy, not cluttered, room, so keep accessories to a minimum. Just remember, modern or industrial elements help make a farmhouse style current!²

- The Star Furniture/Mattress website (starfurniture.com) advertises “Farmhouse Style” furniture.³ The website has a section called “What You Need to Know About Farmhouse Style Furniture & Décor.”⁴ That section of the website provides the following information:⁵

² July 15, 2021 Denial of Request for Reconsideration (TSDR 24-27).

³ July 15, 2021 Denial of Request for Reconsideration (TSDR 14-23).

⁴ *Id.* at TSDR 14.

⁵ The webpages submitted by the Examining Attorney are incomplete because they were cut off on the right-hand side. “It is the obligation of the examining attorney and applicant to ensure that Internet evidence made of record is complete.” TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1208.03 (2021) (citing *In re tapio GmbH*, 2020 USPQ2d 11387, at *3 (TTAB 2020) (exhibits purportedly uploaded with applicant’s request for reconsideration but not appearing in the TSDR record not considered by the Board)). *See also In re Virtual Independent Paralegals, LLC*, 2019 USPQ2d 111512, at *7 n.23 (TTAB 2019) (Examining Attorney submitted Internet evidence with pop-ups making the exhibit partially illegible: “Accordingly, the Board will consider evidence, or a portion of the evidence, only if it is clear and legible.”). We consider the Star Furniture/Mattress website for whatever probative value it might have.

What is Farmhouse Style?

Farmhouse style is an interior design style that prioritizes practicality, simplicity, and rustic charm. While farmhouse style tends to feel both cozy and stylish. Modern farmhouse style has gained popularity over the years, especially through HGTV programming.

What is Farmhouse style Furniture?

Farmhouse style furniture tends to be practical in both form and function, with simple flourishes and a weathered, worn look. It features textures, sleek lines, warm neutrals, and vintage accessories.

History of Farmhouse Style

Farmhouse style originated out of necessity, not as a deliberate response to other dominating styles. Early farmhouses were built during the industrial revolution hit, farm life became easier, which took farmhouse style from a necessity and elevated it to a coveted look in homes that were not part of a functioning farm. Modern farmhouse style owes much of its popularity to the hit HGTV show that is elegant, yet cozy. Today, modern farmhouse furniture can be found across the country.

Major Elements of Farmhouse Style Furniture

Wondering if modern farmhouse style is right for your home? Here are the major elements of farmhouse style furniture so you can decide.

Practicality in Form & Function

One of the most dominant elements of farmhouse style is practicality. When farmhouse style originated, people decorated their homes. The built was built for an explicit, practical reason. This practicality isn't just about function, it also extends to form. Unlike traditional furniture that focuses on functionality than decoration.

Natural Materials

Unlike original farmhouse style, you don't need to exclusively use materials that can be found directly outside.

your home. [] and cotton upholstery. If you're decorating your home in the modern farmhouse style, the more natural-looking the material, [] shine materials to create warmth and style.

Variety of Texture

Because modern farmhouse style tends to be simpler in style, you'll want to try incorporating a variety of textures in order to [] canvas upholstery and metal accents, layering different textures throughout the room is a great way to keep the room from [] décor.

Mix & Match Furniture

When farmhouse style originated, people furnished their home in fits and bursts as they built or acquired more objects. That[] matching furniture collections, mix and match your favorite pieces in a unique and interesting way. Not only should you be [] natural elements like wood with newer ones like stainless steel. When decorating in the modern farmhouse style, make sure [] furniture to complement your style and showcase your personality.

Natural Color Palettes

When you're decorating in the modern farmhouse style, there are a few natural color palettes to choose from. In general, [] tones, or natural blues and greens. From there, add in wood and metal accents to create a rustic, yet utilitarian look that [].

Warm Minimalism

Like other modern and contemporary interior design styles, farmhouse style is also based in minimalism. Modern farmhouse [] present in other modern styles. While there shouldn't be an excess of furniture or flourishes, farmhouse style furniture does []

Embrace Imperfection

Modern farmhouse style embraces the charm of imperfection. In fact, when you're choosing wood furniture, scratches, knots, [] accents, you might consider a more

weathered metal look that alludes to a long, illustrious history.

Big, Comfortable Furniture

While minimalism is still at the heart of farmhouse décor, farmhouse furniture tends to have a larger scale, with an emphasis [] want to choose big, comfortable furniture over sleeker, more aesthetically focused objects.

Mixed Metal Accents

The mixed metals trend has been gaining popularity, and it's found another home in modern farmhouse design. Not only does [] industrial, utilitarian look. Try choosing a few different metal accents for your farmhouse décor. Matte finished metal can be [].⁶

- The Spruce website (thespruce.com) (March 16, 2021) provides the following information:

The 8 Best Farmhouse Dining Tables of 2021

Farmhouse decor has been one of the most popular interior design styles for several years now, and if you're searching for a farmhouse dining table, you'll find plenty of options to choose from. This decor style is very comfortable and homey, and farmhouse dining tables often feature natural wood or distressed paint, as well as spindle legs or trestles. They're a great pick for families, since they look better with a bit of wear and tear.⁷

Pottery Barn is known for its high-quality, farmhouse-style furniture, and the Benchwright Dining Table is one of its best-selling options for the dining room.⁸

⁶ *Id.* at TSDR 15-17.

⁷ *Id.* at TSDR 36.

⁸ *Id.* at TSDR 37.

- The Walmart website (walmart.com) advertises the sale of farmhouse style furniture using the following advertising copy:

Cozy & rustic

A nod to rural beauty, farmhouse style often features barn-inspired lighting, natural textures & galvanized metals. Embodying a simpler way of life, comfort wins over embellishment when it comes to farmhouse style.

What to look for when shopping for farmhouse decor

When it comes to home decor, nothing whispers “welcome” like farmhouse style. With design elements like exposed beams, distressed wood floors, white shiplap walls, sliding barn-style doors, and galvanized metal light fixtures, this design aesthetic is warm, relaxing, and brimming with character. If farmhouse style speaks to you, here’s what to look for when shopping for indoor and outdoor decor.⁹

- The Walker Furniture & Mattress website (walkerfurniture.com) provides the following:

FARMHOUSE STYLE WHEN YOU DON’T LIVE ON A FARM

Farmhouse style oozes warmth, charm, and simplicity. It is not about the color eggshell blue, frilly doilies, and roosters. The style is most connected with Chip & Joanna Gaines from the popular TV show *Fixer Upper*. The show has ended, but the love for this style is as hot as ever.

Here’s how to create it in your own space, and YES it works even in Las Vegas.

THE COLOR SCHEME

Think subdued. Beige, gray, sage and whites with occasional pops of natural woods. In this style home, the color comes from the personalities of the friends and family who gather there.

⁹ *Id.* at TSDR 45-47.

THE VIBE

Practical and evolved over time. The farmhouse style is a mix of new and old. It is sturdy and built for the way life is lived. Nothing delicate, ornate or matchy-matchy.

It's a blend of a comfy sofa built for snuggling with loved ones, and vintage chairs found at a flea-market. ...

ARCHITECTURE

Exposed Wood Beams. Flaunt em if you've got em and if you don't consider adding []

Reclaimed Wood, Beadboard or Wainscoting. []

Barn Doors. Nothing says farmhouse more than a rolling barn door.

THE FURNITURE

Think comfortable, made for living, and oversized. Big comfy couches, sturdy dining tables, distressed wood and wrought iron. Durable pieces made for spending good times with family and friends.

FABRICS

Look for airy, natural fabrics – linens and cotton are the perfect fabrics for this style. Jute or burlap rugs are durable and cozier than you may think.

IN THE KITCHEN

An oversized sink (referred to as an Apron Sink in farmhouse talk) [] Add a few mason jars and you're in business.

LIGHTING

Key to any room there's a lot of latitude when it comes to lighting for this style []

BRING THE OUTDOORS IN

Fresh flowers or sprigs of greenery. Simple arrangements, as if you picked it in your own backyard. Extra points if you

actually did. Old metal washtub and buckets are great for gardening in small spaces. Create your own herb garden while adding charm to your outdoor space. ...

ACCENTS

Farmhouse style is uncluttered, practical, and simple. []¹⁰

● The Cabinfield Home Decorating Ideas website (cabinfield.com) posts an article entitled “Home Decorating With Farmhouse Style Furniture and Decor.”¹¹ The article notes, “Farmhouse style furniture and decor are everywhere” and “are widely seen in the media and on TV shows, adding to the growing popularity of the style.”¹² The remainder of the article provides decorating ideas consistent with those discussed in the above-noted websites, including the following:

A FINAL WORD ABOUT FARMHOUSE DECOR

And finally, the best thing about farmhouse furnishings is the cost. Believe it or not, Farmhouse style home decor is a budget-friendly home decorating option. Here’s why:

- The simplicity of design makes furniture inexpensive.
- Vintage items can be found in a variety of price ranges, to suit your budget.
- DIY decorating creates farmhouse accessories with an authentic, old-time look.
- The feel of farmhouse is eclectic, so you can decide to choose just one handmade Amish furniture piece for your space.¹³

¹⁰ *Id.* at TSDR 49-52. This webpage has pop-ups blocking information. *See* footnote 5.

¹¹ *Id.* at TSDR 54-65.

¹² *Id.* at TSDR 55.

¹³ *Id.* at TSDR 63.

- The Weekends Only Furniture & Mattress website (weekendsonly.com)

advertises Rustic Farmhouse Furniture as “Comfortable, eclectic, feels like home.”¹⁴

We reproduce below the website’s introduction to Farmhouse furniture:

Farmhouse Furniture From Weekends Only

Is your sense of style a mix of casual elegance, with a dose of down to earth durability? Does your dream day include lounging on an overstuffed couch or sipping your coffee at a large dining table with natural accents. If you answered yes to these questions, then Weekends Only Furniture and Mattress has good news for you. We offer a full line of farmhouse furniture that is stylistically rustic and fabulously durable, perfect for your casually stylish home.¹⁵

- The World Market website (worldmarket.com) advertises its “Farmhouse

Collection” as follows:

Complete with an American accent, our farmhouse collection brings you a weathered aesthetic and an old-fashioned aura that ranges from romantic to rustic. Bring a touch of country in your home decor with our every day low prices.¹⁶

- The Ashley Homestore website (ashleyfurniture.com) advertises “Rustic

Farmhouse Furniture & Decor.”¹⁷

- The blog Farmhouse Living (farmhouseliving.com) features a pictorial essay

about Applicant’s Bread & Breakfast Inn “The Prairie.”¹⁸ The author describes “The

¹⁴ *Id.* at TSDR 66.

¹⁵ *Id.* at TSDR 71.

¹⁶ *Id.* at TSDR 5.

¹⁷ *Id.* at TSDR 13.

¹⁸ November 12, 2020 Office Action (TSDR 5-28).

Prairie” as “a prairie farmhouse.”¹⁹ “The Prairie” features furniture and accessories like those described as farmhouse style in the above-noted websites.²⁰

Applicant submitted the evidence listed below to show that “Farmhouse” is not a recognized style of furniture.

• Copies of four registrations for marks consisting in part of the word “farmhouse” on the Principal Register without a disclaimer of “farmhouse.” We reproduce below those registrations with the relevant goods or services:²¹

MARK	REG. NO.	GOODS/SERVICES
CEDAR HILL FARMHOUSE	5072361	Works of art of wood, wax, plaster or plastic; on-line retail store services featuring home décor and accessories
BEEKMAN 1802 FARMHOUSE	5111211	Furniture, mirrors, and pillows
THE FARMHOUSE CHARM	5086368	Wooden signboards
THE FARMHOUSE COLLECTION	1847727	Furniture

• Wikipedia.org entry for “Furniture.”²² It does not list “Farmhouse” as a style of furniture.

¹⁹ *Id.*

²⁰ See also Applicant’s website <shabbychic.com> and Applicant’s Facebook page showing Applicant’s “The Prairie” bed and breakfast inn decorated with farmhouse style furniture and accessories. Applicant’s May 12, 2020 Request for Reconsideration (TSDR 78-87)

²¹ September 29, 2020 Response to Office Action (TSDR 16-26); May 12, 2021 Request for Reconsideration (TSDR 89-107. We do not consider the pending applications Applicant submitted because pending applications are evidence only that the applications were filed on a certain date; they are not evidence of use of the marks. *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1270 n.8 (TTAB 2009); *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1366 n.7 (TTAB 2007); *Nike Inc. v. WNBA Enters. LLC*, 85 USPQ2d 1187, 1193 n.8 (TTAB 2007).

²² May 12, 2020 Request for Reconsideration (TSDR 24-51).

- Wikipedia.org entry for “Farmhouse furniture” stating, “The page ‘Farmhouse furniture’ does not exist.”²³
- Wikipedia.org entry for “Rustic Furniture.”²⁴ It does not refer to farmhouse furniture or style.
- “The Ultimate Guide to Furniture Styles” posted at <1stdibs.com> (January 15, 2021), a blog.²⁵ It does not list or refer to farmhouse as a furniture style.

III. Arguments

The Examining Attorney argues that because “Farmhouse” is a style of furniture and décor, consumers are likely to associate the wording “Farmhouse” in the mark THE FARMHOUSE BY RACHEL ASHWELL with the style of Applicant’s products. Therefore, the Examining Attorney concludes, Applicant must disclaim the exclusive right to use the word “Farmhouse” to indicate that Applicant does not have an exclusive right to use that word in connection with such products.²⁶

Applicant argues that because the Examining Attorney’s evidence refers to “farmhouse-style,” and not “farmhouse” as a stand-alone term, “farmhouse” by itself does not signify to the consumer that it purportedly refers to a particular style of furniture.”²⁷ “In other words, the evidence demonstrates that there is no cohesive or

²³ *Id.* at TSDR 53-55.

²⁴ *Id.* at TSDR 56-59.

²⁵ *Id.* at TSDR 61-76.

²⁶ Examining Attorney’s Brief (14 TTABVUE 6).

²⁷ Applicant’s Brief, p. 7 (12 TTABVUE 12).

unitary definition of ‘farmhouse’ style.”²⁸ “FARMHOUSE is not an official, that is, an accepted or an understood term for ‘a specific style of furniture.’”²⁹ Therefore, Applicant contends, the word “Farmhouse” does not directly convey qualities or characteristics about Applicant’s furniture.³⁰

Applicant also contends that the Examining Attorney has improperly dissected Applicant’s mark by focusing on the word “Farmhouse” and not taking into consideration the other wording.³¹

The use of THE in front of FARMHOUSE and the prepositional phrase BY RACHEL ASHWELL after FARMHOUSE in Applicant’s composite mark THE FARMHOUSE BY RACHEL ASHWELL suggests a singular structure or location owned by a particular person, akin to “The White House”. To put it another way, there is a world of difference in meaning between “white house furniture” and “The White House furniture”. Here, “The Farmhouse” is an alternative name for “The Prairie” bed and breakfast inn in Texas operated by Applicant’s founder Rachel Ashwell. (Request for Reconsideration, May 12, 2021, Ex. E.) Applicant’s use of FARMHOUSE in THE FARMHOUSE BY RACHEL ASHWELL does not refer to a style of furniture at all, but to a bed and breakfast inn where guests can stay and hold events such as weddings and anniversaries. (*Id.*) The online article from “Farmhouse Living” attached by the Examining Attorney describes a blogger’s stay at The Prairie inn and proves that customers understand “farmhouse” to refer to “The Prairie” inn, not to a particular style of furniture. (Office Action, November 12, 2020.) This use of FARMHOUSE in THE FARMHOUSE BY RACHEL ASHWELL has

²⁸ *Id.*

²⁹ *Id.* at p. 8 (12 TTABVUE 13).

³⁰ *Id.* at p. 9 (12 TTABVUE 14).

³¹ *Id.*

absolutely no relevance as applied to Applicant's goods and thus a disclaimer of FARMHOUSE is unnecessary.³²

Finally, Applicant contends that THE FARMHOUSE BY RACHEL ASHWELL is a unitary mark that does not require a disclaimer, citing the TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1213.05(b)(ii)(B) (2021).³³

[W]hen viewed as a composite mark in its entirety, the use of THE in front of FARMHOUSE and the prepositional phrase BY RACHEL ASHWELL after FARMHOUSE in Applicant's composite mark THE FARMHOUSE BY RACHEL ASHWELL suggests a single structure or location owned by a particular person, namely, "The Prairie" bed and breakfast inn in Texas operated by Applicant's founder Rachel Ashwell. (Request for Reconsideration, May 12, 2021, Ex. E.) To state it plainly, the structure in Applicant's mark is expressly referenced as being by or from Rachel Ashwell. The words "THE FARMHOUSE" standing alone, used with Applicant's mark, would be nonsensical.³⁴

IV. Analysis

The MERRIAM-WEBSTER DICTIONARY (merriam-webster.com, accessed January 31, 2022) defines "farmhouse" as "a dwelling on a farm."³⁵ When consumers encounter the mark THE FARMHOUSE BY RACHEL ASHWELL used in connection with furniture and accessories comprising Applicant's description of goods, they are likely

³² *Id.* at pp. 10-11 (12 TTABVUE 15-16).

³³ Applicant's Reply Brief, p. 3 (15 TTABVUE 4).

³⁴ *Id.* at p. 4 (15 TTABVUE 5).

³⁵ The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1104 n.9 (TTAB 2018); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

to perceive the term THE FARMHOUSE as a unitary phrase pointing to a particular dwelling. A mark or portion of a mark is considered “unitary” when it creates a commercial impression separate and apart from any unregistrable component. The test for unitariness inquires whether the elements of a mark are so integrated or merged together that they cannot be regarded as separable. *See In re EBS Data Processing*, 212 USPQ 964, 966 (TTAB 1981); *In re Kraft, Inc.*, 218 USPQ 571, 573 (TTAB 1983). The inquiry focuses on “how the average purchaser would encounter the mark under normal marketing of such goods and also . . . what the reaction of the average purchaser would be to this display of the mark.” *Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 1561, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991) (quoting *In re Magic Muffler Serv., Inc.*, 184 USPQ 125, 126 (TTAB 1974)). The Court of Appeals for the Federal Circuit has set forth the elements of a unitary mark:

A unitary mark has certain observable characteristics. Specifically, its elements are inseparable. In a unitary mark, these observable characteristics must combine to show that the mark has a distinct meaning of its own independent of the meaning of its constituent elements. In other words, a unitary mark must create a single and distinct commercial impression.

Dena Corp., 21 USPQ2d at 1052. If the matter that comprises the mark or relevant portion of the mark is unitary, no disclaimer of an element, whether descriptive, generic, or otherwise, is required. TMEP § 1213.05.

We find that the term THE FARMHOUSE in the mark THE FARMHOUSE BY RACHEL ASWELL is a unitary term because the indefinite article “The” is merged with noun “Farmhouse” to form a single commercial impression. The commercial impression engendered by the term THE FARMHOUSE is a farm dwelling designed

by Rachel Ashwell, rather than as a style of furniture. Thus, we agree with Applicant that its mark suggests a singular structure or location owned by a particular person. *Cf. U.S. Nat'l Bank of Or. v. Midwest Sav.& Loan Ass'n*, 194 USPQ 232, 236 (TTAB 1977) ("The definite article 'THE' likewise adds little distinguishing matter because the definite article most generally serves as a means to refer to a particular business entity or activity or division thereof, and it would be a natural tendency of customers in referring to opposer's services under the mark in question to utilize the article 'THE' in front of 'U-BANK' in view of their uncertain memory or recollection of the many marks that they encounter in their everyday excursion into the marketplace.").

The Examining Attorney argues to the contrary:

[I]t is also possible that consumers viewing the wording "FARMHOUSE" and familiar with applicant's inn also view the wording as referring to applicant's aesthetic (of a "farmhouse inn,") and believe that applicant's goods also feature a "farmhouse" look.³⁶

However, the Examining Attorney's argument incorporates a multi-step reasoning process on the part of consumers to make the nexus between Applicant's use of the word "Farmhouse" in the mark THE FARMHOUSE BY RACHEL ASHWELL and Applicant's products. That is, the consumer must insert a generic term such as "look," "aesthetic," or "style" after the word "Farmhouse" to directly or immediately convey the Farmhouse style furniture. In this application, the sum of the whole mark is more than the individual components thereof because the whole creates a commercial impression slightly different and separate from its components. *See In re Am. Fertility*

³⁶ Examining Attorney's Brief (14 TTABVUE 8).

Soc’y, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999) (the Board cannot simply rely on the definitions of the constituent terms of a mark, or a phrase within the mark, in lieu of analyzing the meaning of the disputed term or phrase). *Compare In re The Computer Store, Inc.*, 211 USPQ 72, 75 (TTAB 1981) (THE COMPUTER STORE is the common descriptive name of applicant’s computer and computer book outlet services).

In *Computer Store*, the Board analyzed whether the definite article “The” converts the merely descriptive term COMPUTER STORE into a registrable service mark. The Board held it does not because THE COMPUTER STORE is merely a term of reference, used to describe the characteristics of the particular store (i.e., a retail computer store), rather than to indicate a particular source. *Computer Store*, 211 USPQ at 75. In this application, THE FARMHOUSE in THE FARMHOUSE BY RACHEL ASHWELL is not a term of reference directly or immediately describing furniture. Rather, as discussed above, it connotes a particular type of dwelling with which some thought the consumer may associate with a particular style of furniture.

In keeping with the controlling case law, any doubt here must be construed in Applicant’s favor and in favor of reversing the disclaimer requirement. *See In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir. 1987) (“It is incumbent on the Board to balance the evidence of public understanding of the mark against the degree of descriptiveness encumbering the mark, and to resolve reasonable doubt in favor of the applicant, in accordance with practice and precedent.”); *In re The Noble Co.*, 225 USPQ 749, 750 (TTAB 1985); *In*

re Bed-Check Corp., 226 USPQ 946, 948 (TTAB 1985) (“[A]ll doubt is resolved in favor of publishing the mark for opposition.”); *In re Mobile Ray Inc.*, 224 USPQ 247, 248 (TTAB 1984) (“[W]hen there is doubt in the matter, the doubt should be resolved in Applicant’s behalf and the mark should be published for opposition.”). Accordingly, after resolving any doubt in the record in Applicant’s favor, we find that Applicant’s mark is unitary and the presence of the word “Farmhouse” in the mark THE FARMHOUSE BY RACHEL ASHWELL is suggestive, not merely descriptive.

Decision: We reverse the requirement that Applicant must disclaim the exclusive right to use the word “Farm.”